Armed Citizens' Legal Defense Network, LLC
eJournal
Our Thirty-fifth Issue — December 2010 — Now In Our Third Year

Exhuming Lost Details: Defending Stuart Urie

by Penny Dean and Gila Hayes

In last month's edition of the Network journal, we related the unfortunate series of events that put Stuart H. Urie of Milford, NH in jail over Christmas, 2006, after, according to Attorney Penny Dean, his neighbor Brent Stone twisted the facts of an incident in which five men confronted Urie. If you missed the last edition, read about this case ***linked here***, then return to this, the second installment in this two-part series to learn how Concord, NH attorney Penny Dean took the case at the eleventh hour, fought to discover the truth and finally put it in front of a jury, resulting in two Not Guilty verdicts and additional dropped charges.

In October of 2007, when Penny Dean took over the defense of Stuart Urie, Attorney John Kacavas, who Urie had hired to defend him, had compiled only the barest skeleton of a 49-page case file, and was pushing Urie to accept a plea bargain. The deadline had long since passed to file an affidavit of affirmative defenses, an absolute necessity if pleading self defense.

Dean explains that when it became undeniable that Urie's actions were purely self defense, the county attorney verbally offered Urie's first attorney a plea offer of no jail time if he pled to a misdemeanor charge, though it was never put in writing. Declining the offer subjected Urie to the threat of a minimum mandatory three- to seven-year prison term if convicted.

Dean relates that when RSA 651:2 II g was enacted in New Hampshire, she alone opposed what was being touted as a "tough on crime" law, predicting that it would be used to prosecute law-abiding citizens after acting in self defense. "I said we have enough laws to punish criminals. This one will be used against citizens wrongfully charged in self-defense cases to scare them into accepting a plea bargain," she says.

"I was told I was wrong, but sadly, every case like this has proven me right. Urie could have taken a plea and saved a boatload of money. Instead, he and Darlene stood tall, faced a huge risk of mandatory jail time and spent tens of thousands of dollars, because he said he would not plead guilty to anything when he did nothing wrong. You do not know how many people do not have the resources and are practically forced to plead."

Before supporting similar legislation, Dean suggests that gun owners from other states should carefully consider "if there are other adequate laws to deal with criminals, as some 'tough on crime' legislation can be used in a devastating manner in self-defense cases." She explains that these laws are too often invoked to coerce plea bargains after a self-defense incident.

An Uphill Court Battle

Dean could find little of use in Kacavas' files, and she embarked on a desperate effort to obtain dispatch recordings, police records and statements, plus she began gathering statements from everyone involved. She hired experts to analyze and report on any details they could find about what happened.

Dean also had to control how the charges against Urie would be heard. She moved to sever the charges and the court upheld her objection to the State's attempt to consolidate the charges for one, single trial. A whirlwind of work ensued, preparing to defend against the accusations. Finally, in December of 2008, Dean won the case in which Stuart Urie was charged with criminal threatening, but only after Herculean effort.

Dean's private investigator and an interviewer took statements from the complainants, the involved police officers and Stuart and Darlene Urie. Dean also engaged a talented expert witness, Robert Meegan, who studied

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all the police reports, comparing what officers did against best police practices and wrote a scathing report identifying error upon compounding error in the police response the night of December 22, 2006. Meegan identified factual errors in information the police dispatcher relayed to officers, but he was also quite critical of what the police did and how the State painted their actions in court. "Facts never met with their story of this case. Thank God that for once the jury saw it also," he later wrote.

Dean and Meegan offered to meet with the prosecution's investigator and share their findings about what happened but the offer was rebuffed. "I think they already knew the facts and wanted deniability," Meegan later alleged.

The work of these experts gave Penny Dean much about which to ask witnesses during the case, but the court, determined to keep the trial short, did not allow Meegan to testify, claiming his expertise was not relevant and thus not admissible.

Likewise, Dean was not allowed to introduce the social relationships between Stone and the police officers that arrested Urie, nor was she allowed to bring in evidence of prior criminal convictions against Stone and his friends. "I lost that motion miserably," Dean exclaims, emphasizing that her case met the usual admissibility standard: Urie was well aware of the crimes at the time of the incident and acted upon that knowledge when he drew his gun in response to Stone's actions. Dean's attempt to introduce the criminal histories was not a courtroom trick to smear the reputations of Stone and his friends. She wanted those facts included to explain that Urie's fear of Stone was founded in fact, she relates.

A tremendous amount of work and investigation went into efforts to bring into court evidence of the very real threat Urie faced from Stone and his friends, and that accounted for a large part of the expense of Urie's defense. "It would have been oh-so-much easier if I had won the 404B motions," Dean recalls wistfully. Had that succeeded, exposing the fact that Urie's accusers were criminals with long records might have convinced the State to drop the charges, she estimates.

Denied this and other lines of inquiry, Dean made sure to object to the rulings against Urie, preserving the ability to appeal on these and a variety of other points. Then during the trial, "I made sure to focus on how Stone verbalized when he was approaching Stuart, and I had to be really focused on body language and Stone's demeanor. It was all I could do," she relates.

Further, much of what happened between police officers and Urie and how they made the decision to go through his apartment were clouded by the practice of officers using cell phones to communicate during the incident, instead of relaying their concerns and decisions over the radio, which would have been recorded.

Compounding the complexity of the case and the difficulty Dean had obtaining details required to defend Urie was the intensity of police response to Stone's call. Dean notes that at least ten police officers came on the scene and many entered the building after Urie was removed from his home. This created a lot of witnesses to the events surrounding Urie's arrest. At the same time, Dean found "a surprising lack of reports," when she considered how many officers responded to Stone's call. These all needed to be investigated to avoid being blindsided in court, as well as seeking out details that would help exonerate the defendant. This added considerably to the complexity and cost of the trial, because each had to be interviewed and their recollections became part of the record of the incident, she adds.

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Dean remains convinced that the guns officers claimed to see in plain view (while ostensibly being sure Urie had not injured someone inside his own apartment) were taken from inside Urie's locked gun cabinets and put out around the apartment. Convinced of this belief to this day, in court Dean argued that the guns were not the product of a legal search and as such should not have been mentioned during the criminal threatening trial. "No guns, no trial," she explains. So what could she do when her plea to exclude the guns from evidence fell on deaf ears?

Attorney Penny Dean and her client insist that these gun cabinets were closed and locked when police originally entered the apartment to look for Darlene Urie.

Urie concurs that there were no guns out of his lockers, and points out that police evidence photos from discovery only show empty gun boxes, not a number of guns out in the open.

Unexpectedly, Dean's unsuccessful suppression hearing about the guns in the apartment revealed a lot about what police did on the evening of December 22, 2006. While that was not the intention of the suppression hearing, Dean does not believe that its expense was wasted, especially in a case where the State put so much effort into preventing access to their records and evidence.

Of course, most of the evidence and facts about what happened on December 22, 2006 came to light only through grueling, hard work. Dean notes that while she may commit more time and money than most lawyers to what is called "discovery," compelling the State to "produce certain objects and information [about the case] in its possession," those very details help her understand how best to counter the various aspects of the charges against her client. Discussing the Urie case recently, Dean explained, "I have learned to fill in all the seemingly inconsequential details."

Dean explains that she also strives to flesh out details of the underlying incident when presenting her case to a jury, knowing that what resonates with one juror may not make an impression on another. Her obsession with detail influences another aspect of how she practices law. She relates that each time she loses a motion or is somehow denied what she feels is needed for the defense of her client, she learns from that experience and the next time, her requests for discovery and other motions are even more extensive.

On the downside, she continually runs up against judges who cannot allocate sufficient time for Dean to present her client's side of the case in the depth of detail she believes necessary. This she attributes to budgetary pressures, explaining that in New Hampshire the courts are now closing early and do not operate at all on certain days. In addition, the New Hampshire courts do not schedule jury trials during certain months, limiting available trial time, adding to the pressure judges put on lawyers to "speed it along."

Much Time Lost

One of the greatest obstacles Dean overcame in her defense of Stuart Urie was the considerable amount of evidence lost or obscured during the months that passed between the incident and the day Dave Wheeler brought Stuart Urie to her office. She expresses considerable frustration with recordings of police radio traffic between officers responding to Urie's apartment building. While she

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obtained recordings, she was unable to convince the judge to order the Milford Area Communications Center to give them to Dean in a format that her experts could analyze. While Dean and Meegan came to believe that segments had been removed from the recording, in the format in which it was made available nothing could be proven. Dean was most frustrated because the equipment used by the dispatch center offered a variety of formats in which the recordings could be saved, yet the Court refused to order the State to provide the information in the format she requested, a simple option in the "save as" menu the equipment used. This prevented Dean's experts from determining whether or not the recording was unaltered.

Many of the State's witnesses claimed to remember little about the incident, though Dean had a tactic to turn that against them. Several of her lines of questioning proved how witnesses claimed forgetfulness to avoid answering damning questions.

And in the end, all of the details, the re-investigation, the interviews and the exhausting work paid off, when, in December of 2008, a jury found Stuart H. Urie not guilty of criminal threatening and the judge directed a verdict pertaining to one of the complainants who admitted on the stand that Urie had not threatened him by deliberately pointing a gun at him.

Dean later won a Not Guilty verdict from a jury on charges that Urie resisted arrest during the initial contact in his apartment building. She then stared down the State's attorney until she told the court she would not prosecute the charges stemming from allegations that Urie resisted arrest in the booking room. The State threatened additional charges of criminal mischief, but never actually filed the charges. Dean emphasizes that overwhelming the defendant with numerous charges is an intimidation tactic used to encourage plea bargains if the defendant and his attorney can be convinced that the State simply has the power to overwhelm them with one charge after another.

A Better Course of Action

Today, the Uries continue to live in and operate their apartment building next to Stoney's Sunoco, and the proximity to Brent Stone cannot be an easy aspect of day-to-day life. A successful digital design engineer before December 22, 2006, Stuart Urie had thrived at his job despite severe economic downturns in the area. After his trials wrapped up, he was laid off from that job and has not been able to find work in his field of expertise since, owing, it is thought, to Internet and media reports about his case. Dean observes that it is common for prospective employers to do a background investigation on applicants, and suggests Urie is passed over for applicants with fewer complications in their background. Urie reports that during a job interview, the manager at Lowe's in S. Nashua, NH called him a felon, and he has also been called a "cop basher," he states. With Urie now working at a Home Depot store, the couple continues to struggle to stay afloat financially.

It is doubtful if anyone could have foreseen and avoided the underlying incident with Stone and his friends. Obscured by darkness, the five men were too close for Urie to avoid contact by the time he was aware of what was happening. What can we learn, then, from Urie's ordeal? Could he have handled involvement with the police any differently?

Penny Dean's list of lessons learned won't soothe Network members leaning toward a pro-law enforcement viewpoint. Still, her observations provide food for thought, and it is unarguable that gun owners really must plan ahead to protect their rights if they have contact with law enforcement.

First, Dean suggests, Urie should not have opened his apartment door when he thought he heard a key in the lock. She believes that law enforcement did not have sufficient cause to compel Urie to come out of his apartment at that moment, and a bit of time to reconsider and investigate what had actually happened might have changed how police approached Urie. Based on their initial approach to him, Dean believes the police had already decided Urie was guilty.

Using her own situation as an example, Dean explains that she has equipped her house with a sturdy locking storm door in addition to the main door. Both doors are

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kept locked, she details, and if someone knocks, she can converse with them without unlocking the storm door while they stand on the porch. If asked to invite law enforcement inside to talk or look around, Dean believes it is better to politely respond that they are currently talking right where they are at and can continue to do so without going inside.

If officers say they would like permission to come in now or they will come back with a search warrant, Dean recommends polite, friendly firmness, saying something along the lines of, "That's alright. Go get the warrant and come back."

Illustrating an alternative outcome, Dean recounts the case of another client (this one in jeopardy from his own wrong behavior) who was asked to come outside to answer a police officer's questions. Dean coached him to leave his home's main door locked, empty his pockets of anything that could be taken into evidence if they arrested him, and go outside from a different door, carrying a portable phone on which the client had telephoned her. The client was to tell the officer that his attorney was on the phone and would be involved in advising the client during the contact.

In Urie's case, Dean believes the charges of resisting arrest might have been avoided had he stayed in the locked apartment until someone – a friend, or legal counsel – could be summoned to stand by during his contact with the officers. As it was, the only actual witnesses – Urie and two arresting officers – were involved in the initial incident in the hallway, creating a "he said; she said," conflict in reports of what happened.

For example, Urie reports having a small glass of wine much earlier in the day when nearly all of the police reports accuse Urie of drunkenness and report a strong odor of alcohol on his breath. Despite those claims, no tests were administered to prove or disprove his level of intoxication, so the only information available came from parties deeply embroiled in the incident.

Finally, we have to consider the time lost preparing Urie's defense. In the nearly ten months he had the case, Urie's original attorney only obtained 49 pages of discovery and filed far fewer pages of pleadings, "which is even worse," Dean comments. Compare these to the approximately 500 pages of information obtained in discovery that Dean would eventually compile from further discovery requests and transcripts. Urie writes that the first attorney "kept me in a state of constant fear" and "never really kept me informed. I had to at one point have Darlene's niece, a lawyer, call him to ask how my case was proceeding."

Dean adds that it only makes sense to seek a new attorney "if you do not feel good about your lawyer or he/she does not give you answers that make sense." She comments that while she is not afraid to give her clients bad news when trouble arises, she also makes sure that they are confident in her and in their case, no matter what.

As she told Urie's story, and explained how she defended him in court, Dean several times repeated the axiom that, "There is theory and there is reality," emphasizing that we frequently confuse what we believe "should happen" or what we think is "right," with events that we are even then watching play out right in front of our eyes. Great danger lies in this kind of delusion, she stresses. ●

Disclaimer: Legal information as presented here is not the same as legal advice, which is the application of law to an individual's specific circumstances. Although I go to great lengths to make sure this information is accurate and useful, I recommend you consult a lawyer if you want professional assurance that this information, and your interpretation of it, is appropriate, accurate and complete with respect to your particular situation.

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About the author: For more information go to ***http://www.pennydean.com*** *or email her at* ***penny@pennydean.com***

President's Message

Marty Hayes

Value for Value

Why do people join the Armed Citizens' Legal Defense Network, LLC? I realize that this is somewhat of a rhetorical question, and I expect the answer lies in what is called a "value for value exchange."

Many years ago, I read a book called *Restoring the American Dream* by 1970's self-help author Robert J. Ringer. If you do a Google search on the name, you can read everything you want about the man. This was the third of his books I had read, books that helped form my business and personal philosophy when I was in my early twenties. Synthesizing many thousand words into a few hundred is not easy, but I will try my best.

Restoring the American Dream was about Libertarianism, and reading the book was the first time I had heard of the Libertarian Party and what they stood for. I read this book on a backpacking trip by myself, just me, the mountains, the lake, my blue pup tent and the book. It was actually kind of weird having hiked a couple miles all uphill to the lake, taking the time to set up the campsite, only to spend the weekend reading a book instead of fishing, but at the time it seemed like just the right thing to do. The fact that about 30 years later I remember the weekend and reading the book so vividly seems to validate that decision.

The concept of the "value for value" exchange is probably the single most valuable message I got from Ringer's books. That philosophy, simply put, means that in order for any person or endeavor to thrive, their interactions with people must be guided by this concept. Anyway, to me this meant that in order to be successful in your dealings with people, you must give the person you are dealing with an equal value for what you are expecting to receive. If this exchange is out of balance, problems occur. For example, we all know people who we would categorize as "users." They're the kind of people who ask for help, take what is offered or more, and never give back in return. Well, these people go through life always unhappy, seeking the next person they can "use," and have few if any true friends. On a business model, "value for value" means selling, renting or otherwise satisfying a need in exchange for a reasonable monetary gain, or in some cases, a fair trade for a product you can use. I apologize to Mr. Ringer if I didn't quite capture the essence of what he was saying, but this is what I got out of it.

So, what does this philosophy have to do with the Armed Citizens' Legal Defense Network, LLC? Actually, it has everything to do with the Network, because the whole underlying business model and ultimate success of the Network is driven by this "value for value" exchange. You see, it has been my goal from the beginning to offer a "value for value" exchange with our members, believing that if you and I agree that it is worth the $85 per year membership fee to belong to the Network, then you will continue to be a member. Based on the success of the Network to date (see editorial), I would say we have accomplished this goal. But, please be sure to let me know if this balance, this "value for value" exchange becomes one sided. If it does, we will work to fix it.

In fact checking for this column, I found out that *Restoring the American Dream* by Robert J. Ringer has been updated, re-published and is now available in bookstores, (***see link***). I will be adding one to my Christmas list.

Affiliated Attorney Question of the Month

Thanks to the generous help of our Network Affiliated Attorneys in this column, we introduce our members to our affiliated attorneys while demystifying aspects of the legal system for our readers. This month, we posed the following question to our Network affiliated attorneys—

Many callers ask the Network, "Should I pay an attorney a retainer now so he or she will help me if I'm in a self-defense shooting?" Most aren't sure what a retainer is or what paying a retainer to an attorney might do for them, especially in light of the Network's membership benefit of a $5,000 deposit against fees, sent immediately to the member's attorney after a shooting.

Could you explain what "having an attorney on retainer" means, and answer their question, "Is having an attorney 'on retainer' useful for an armed citizen?"

Thomas Cena, Jr.

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The term "having an attorney on retainer" implies that the client has engaged (hired) and paid for services that may be necessary in the future or are anticipated on an ongoing basis. I don't think an armed citizen needs or should have such an arrangement.

If, after a critical incident, it is discovered that the client has retained a lawyer regarding possible legal aspects of an armed encounter, someone–police, prosecutor or family of the aggressor–may argue that the client anticipated or even expected to be involved in such an encounter.

I think it is better for the armed citizen to locate an attorney in her area who is knowledgeable in firearms law and understands the concept of the defense of self or others. Then go see the attorney and have a brief office visit. There may be a charge for the time or the attorney may do it without charge. The potential client will see if she likes the lawyer and get general information regarding self-defense legal issues. Information on how to reach the attorney at any time of the day should be obtained. If then the citizen is involved in a critical incident, she can immediately contact the attorney. At that time a fee, either a "retainer" or an "advanced fee deposit" will probably be discussed. If a $5,000 deposit is available, it may be agreed as the retainer or AFD (advance fee deposit), or some other agreement can be made between attorney and client to use the deposit to substitute for or reduce, by that amount, the amount of money due the attorney from the client.

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A retainer is an advance deposit of attorney fees. Many lawyers will require a new client to pay a retainer as a form of security for payment of the attorney's hourly fees. Retainers are sometimes treated as advance deposits–which then may be drawn down as the fees are earned. Other times, attorneys will bill the client on a monthly basis for fees incurred and keep the retainer deposit as security until the final bill is rendered.

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You do not necessarily have to pay an attorney a retainer in order to establish a relationship for future representation. In those cases, the retainer is simply held in trust until the fees are earned, and many lawyers would prefer to avoid the hassle of holding trust funds for an indefinite period.

I would suggest contacting the attorney you intend to use in the event of a self-defense situation and setting up an office visit. It is important to meet the attorney, establish your credibility as a responsible citizen and a serious client, and develop a rapport. Depending upon the lawyer, you may have to pay a consultation fee for this meeting–possibly several hundred dollars. If you are asked to pay for the consultation, do so immediately at the conclusion of your visit to establish your willingness to pay for services rendered. This will be noted and remembered.

During your initial meeting, ask questions about the attorney's rates and retainer policies. You can take the opportunity to ask if the attorney requires a retainer in order to be available to you, or if a retainer must only be paid after a formal representation is commenced.

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Generally a retainer is paid where the attorney has undertaken representation in a specific case or is retained so that he will not provide representation to another party, e.g. in certain business or domestic cases. However, it is always a good idea to have an attorney that you can contact if you need one. Many attorneys will not charge a fee unless it becomes necessary to actually do something.

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I recommend having a self-defense lawyer on retainer. The events immediately following a self-defense shooting are a poor time to secure counsel, and negotiate favorable terms. At that point people are desperate.

Some lawyers have an I.C.E. (in case of emergency) number that they make available 24/7 at no cost. In a poor economy, this is an excellent tool immediately after an encounter, following a 911 call, but prior to the police arriving at the scene. If the I.C.E. number is available at no-cost, this gets you over the initial hump to either telling the police limited information about the engagement, to saying nothing. The self-defense lawyer must quickly evaluate the situation, and the surviving victim's state of mind, and use his best experience to guide him.

A free I.C.E. number call ends with the initial conversation, and that is a problem since there are always questions from spouses, girlfriends, friends, and family that follow. These questions require an engaged attorney, and that requires a retainer. Everyone wants to know what happens next and what they should do. How long will he be in jail if he has been arrested? Will the state prosecute? Will the bad guy's estate sue? What about the Castle Doctrine, or Stand Your Ground Law? There are a plethora of questions that can last a few hours. These events don't always happen during regular business hours, so having someone willing to discuss the matter at 11:30 p.m. on a Friday evening can be tough.

A retainer is a deposit of sorts. The retainer of $5,000 will sit in the lawyer's trust account for the benefit of the

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client. As the client uses the lawyer, funds are withdrawn from the trust account and received by the law firm.

Retainers can sit idle for years and should a client need the money, a letter asking for its return is all that is required. Mind you, once the money is returned, that lawyer is no longer available for assistance.

While I.C.E. numbers are great, a self-defense lawyer's cell number is ideal. Unless you happen to be friends with one, the only way to get it is through a service or by engaging an attorney.

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I frequently get calls from armed citizens asking me what it takes to have me "on retainer" just in case they someday need my help. Every single one of these callers has been surprised when I tell them that by just calling me they have done everything they need to and then some.

Criminal defense lawyers are, by their very nature, reactive. Nearly without exception, we get involved after the event – whatever that might be – has happened. Consequently we are very used to being called into action without warning in much the same way an emergency room physician is. You don't have to pay money to your local hospital's emergency room to provide services you might someday need, and in my opinion there is no legitimate reason for a lawyer to charge a fee for the unlikely event that someone might someday need their help. The simple truth is that when I have received middle-of-the-night calls from people with whom I don't have a past relationship, I jump into action on a triage basis just like the emergency room physician will. Any reputable defense lawyer will do the same.

People have been conditioned to expect that a lawyer of any sort will charge a fee retainer. A retainer is merely a deposit to be applied to future fees that the lawyer expects to earn. When you hire a lawyer to draft a will, you know that there will be a fee, and the retainer will be applied to that fee. The same is true when you hire a lawyer to assist in a contract dispute, or a divorce, or countless other types of situations where it is known up front that the lawyer's services will be needed. Given that the likelihood of a permit holder actually needing a defense lawyer is remote, however, paying a retainer to a defense lawyer just doesn't make good financial sense and it isn't necessary.

The critical thing is to know now who you will call if the need unexpectedly arises. The old adage about how "those who fail to plan, plan to fail" couldn't be truer. I frequently speak with people who have recently obtained their carry permits and I have mailed out business cards to many of them with the suggestion that they carry one alongside their permit card and give the other to a trusted friend or relative that they could contact in an emergency. That way if the need arises, they know (1) who to call, (2) how to reach me, and (3) most importantly, they will have spoken with me before so that even down the road if I don't recall the specific conversation, they will have at least had the opportunity to determine that I am indeed the person that can help them if necessary. As I tell the armed citizens with whom I speak, "By planning what you will do if you are forced to defend yourself you almost certainly guarantee that you never will."

Responses to this question were numerous, so we will continue with this question of the month in the January edition of the ***eJournal****. Thank you, affiliated attorneys, for contributing to this column.*

Affiliated Instructor Question of the Month

One of the Network's great strengths is its affiliation with firearms instructors all across the nation. With the goal of introducing more of these professionals to Network members, in this edition, we are delighted to continue the *Question of the Month* feature with a question that generated so many great answers last month that we continued it in this edition. We asked:

Many students of shooting who trained this summer, may be facing a slow down in classes and competition as winter's cold looms especially if they patronize indoor gun ranges where they can work on pure shooting, but are usually prevented from drawing from a holster and more. When students ask you how they can keep defensive shooting skills sharp, what advice do you give?

Rob Pincus

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Subjugating your training to the arbitrary rules set by range owners more concerned with protecting themselves and their range than you when you're in the middle of a fight is never a good idea. It's an equally bad idea to compromise your training time by modifying your techniques or equipment to try to score better in a competition. It is also a bad idea not to train at all because it is cold.

What I am getting at is that it takes time, effort and energy to train properly. It also takes some discipline and you might have to go against the grain or swim upstream when compared to the average shooter. Remember that the end result, being able to defend yourself more efficiently when you NEED to, makes it worth the extra drive to a range that accommodates proper defensive shooting training. It makes it worth shuffling through some snow for a short training session in your winter gear (the way you actually carry when it's cold, of course). It makes it worth not scoring as well in a game. It might even be worth NOT shooting for a month or two if you are only going to be getting bad reps that don't reinforce the techniques you really want to own.

In the worst case scenarios, when you really aren't going to be able to get to a proper range for an extended period of time, you might use something like the Laserlyte Training Laser and new Training Target System to get some practice presenting from the holster to your shooting position with some accountability for the first shot. Just remember, defensive shooting situations are most likely going to require rapid multiple shots which require you to efficiently establish a good platform and manage recoil while being accurate. Any shooting that doesn't include those components is potentially a waste of time.

Train consistently, even if it takes some extra effort.

Steve Langenbeck

Arlington, WA

High quality Airsoft guns can be used around the yard and even inside the garage and basement. The good ones work and feel so much like real guns and are very accurate to about 40 feet.

They are especially good for practice like shooting from unusual positions and around barricades and drawing from the holster, which in general isn't allowed on any public nor most private ranges.

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208-376-9506–*http://www.defensivestressfire.com*

I generally tell folks that bad guys don't take the winter off and neither should they. Training in the winter is simply applying your life to your training. Do not alter things when you train. If you wear gloves in your everyday life wear gloves to train and if you don't wear gloves then don't wear gloves to train. Bad things can happen at any time so prepare for it. What are you wearing when you empty the garbage or feed the animals? Wear the same clothes to run some drills while training. Take off your coat, hat and gloves to run a couple of drills. Let yourself feel what it is like to function in an uncomfortable environment. If you work outside in the cold weather, then bundle up while doing some drills.

Prepare yourself for your world. If it is snowing out that doesn't mean you should cancel your training session; it just means you get to train in that weather condition. If it is raining out, just remember, "If it ain't raining, you ain't training." Step out from under the cover and feel the rain or snow in your face as you do some drills.

Dry fire exercises are vital training all the time but can be a big help to your program in the winter. Not everyone has access to an indoor range but you can do dry fire at home. Be sure to condition check your gun (be sure its unloaded) and be sure all ammo is removed from your training room before you begin. Practice your draws in front of a mirror and make your presentations smooth. Make that trigger press smooth and straight to the rear.

Winter is a good time to catch up on your reading. There are lots of good books out there. It is also a good time to watch training videos.

Do not look at winter as a time to shut down but as a time to shift gears.

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When it comes to live fire practice, locating a range is a real issue for most who live anywhere populated. There isn't a simple answer to the problem, but the answer to the question is: Find a friend with rural property and dress warmly. Yes, it's easier said than done, but it's the reality of the situation.

For those who may want to involve the entire family, concessions need to be made for cold and wet shooting conditions. You may have to bring a portable heater, hot drinks, extra clothing, and/or be willing to leave a vehicle run to let folks warm up. You may need to accept that your shooting session will not be an all-day affair, and that some are simply not going to brave the weather for extended periods just to go shooting.

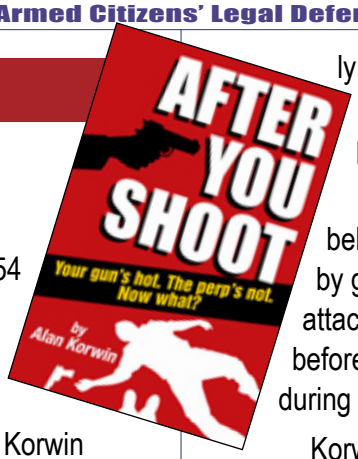
That being said, there are alternate forms of training available during the cold months. Options like Mas Ayoob's Armed Citizen's Rules of Engagement course, or a defensive blade class, are great accents to the CCW holders skill set. There are also many schools offering force-on-force classes where simunitions or Airsoft guns are used in place of live fire. I would highly recommend that all of us engage in scenario-based training, and winter is a great time to go!

Lastly, I suggest dry fire practice at home. This includes draw stroke and moving off the line of force, should be a regular part of every operator's training regimen, and is something easily accomplished regardless of weather.

Owing to the many responses, this column continues next month.

Book Review

After You Shoot



By Alan Korwin
Bloomfield Press
4848 E. Cactus #505-440, Scottsdale, AZ 85254
800-707-4020–www.gunlaws.com – $14.95
ISBN: 978-1-889632-26-1

Reviewed by Gila Hayes

In his latest book, *After You Shoot*, Alan Korwin asks how the self-defense shooter can invoke their right to remain silent and still call 9-1-1. The obligatory call to law enforcement usually entails insistent information-gathering from the emergency dispatcher who communicates those details to responding police officers enroute.

Korwin writes that the armed citizen involved in a self-defense shooting should not tell authorities anything for fear of helping the state build the case it will prosecute against them. It is inconsistent to advise armed citizens to "say nothing to police" without a lawyer present, because one cannot avoid communicating with police if calling authorities after a self-defense shooting he writes, adding, "…The idea that you have a right to remain silent and the right to an attorney is false. If anything you say can and will be used against you – but you are required to speak up right after an incident – then there is no justice in the justice system. You are required to potentially implicate yourself in a capital murder case."

Korwin's concerns are legitimate. In the December 2009 edition of this journal, I wrote about the Luke Sanchez case and the recording of his 9-1-1 call ***linked here***. It is hard to argue that Sanchez' responses to the aggressive dispatcher did not contribute to the case against him.

Seeking Alternatives to a 9-1-1 Call

Korwin does not believe the armed citizen surviving a deadly force attack has the composure to give a succinct report of who attacked whom, and then shut up. He opens the book by recommending that after a self-defense shooting you should call your attorney who, calm and composed, can order police and medical aid sent to your location and state that you have "just survived an assault." Otherwise, Korwin suggests telling 9-1-1 dispatch you have "just been attacked," ask for police and ambulance and hang up. When police arrive, he recommends immediately reciting a statement to invoke the right to refuse to answer questions without your attorney present.

As readers of this journal know, the Network believes that much legal jeopardy can be avoided by giving authorities a brief description of what the attacker did that initiated the self-defense shooting before invoking the right to have an attorney present during questioning.

Korwin asserts that there is no law requiring you to even call 9-1-1 after a shooting, because self defense is not a crime. He quotes Mitch Vilos, author of another Bloomfield Press book, *Self Defense Laws of All 50 States,* who concurs that no commonly known laws require a call to 9-1-1 after self defense. What neither perceive is that the crime being reported is the assault against you, not your defense against it.

In the chapter entitled *Experts*, Korwin introduces opposing arguments, starting with Massad Ayoob's five-point checklist of what to tell police after a shooting (For details, see Network DVD entitled *Handling the Immediate Aftermath of a Self-Defense Shooting)*. This Korwin contrasts with advice from the American Civil Liberties Union. Since the ACLU's guidelines are printed on a card, the discussion moves to handing police a statement printed on a card to decline to answer questioning.

Korwin quotes Ken Hanson, author of a book on Ohio gun laws (and a new Network Affiliated Attorney). Hanson suggests that statement cards handed to the police usually have a more deleterious effect than briefly informing the officer that you intend to exercise your right to have an attorney present during questioning. "Every police encounter is a negotiation from the beginning up until the point that the good will is burned up," Hanson contributes, adding that telling an officer not to violate our Fifth Amendment rights is the equivalent to waiving a red flag in their face. Next, one of the Network's first attorney affiliates, Sean Healy, advises making a brief statement clearly identifying the self-defense shooter as the victim of a predatory criminal. His advice joins that of additional attorneys. We won't repeat it all here, but the quotes should help Korwin's readers decide if handing a cop such a card is wise.

After pages upon pages of quotations from experts,

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Korwin points out that none could cite a case in which a citizen fared badly in court after presenting responding officers with a printed card invoking their rights. He asserts that without actual cases all of the advice offered is at best "cold air," better perhaps than "hot air" but far short of empirical fact.

The "silence" card and other strategies to which Korwin is partial, spark a wealth of suggestions from various experts. The book quotes a sheriff's deputy who emphasizes, as do others, the need to call 9-1-1 first to establish that you were the victim. This done, put down the phone to avoid being questioned, he advises. It solves the problem of what to tell the dispatcher, but does not help if police have trouble finding your location, or in determining whether the pounding on the door is the assailant's accomplice or police arriving on the scene.

To Speak or be Silent

After You Shoot includes a long exposition by attorney and gun writer Mark Moritz, who passionately advocates taking the Fifth. These pages echo Korwin's assertions that offering even a brief explanation opens the floodgates of a virtually irresistible temptation to speak at length to police, giving details that upon later reflection are out of order or inconsistent with events.

Advice against giving a detailed explanation is consistent with research by force science scholars who suggest that at least one if not two whole sleep cycles are required to coalesce recollections of a traumatic event. Other studies corroborate Korwin's warnings against giving statements attesting to order of events, specific distances, time elapsed or number of shots fired.

Where we part ways is Korwin's belief that to say anything to responding officers unleashes an unstoppable flood of admissions. Telling armed citizens that they will become babbling, incoherent idiots is like the pseudo-science about people becoming incapable of precise marksmanship when danger increases heart rate and other body alarm reactions common in emergencies. If this level of skill loss is unavoidable, how do we explain skilled marksmen who made accurate shots under incredibly trying circumstances? See the histories of the late Jim Cirillo or Airman Andy Brown to name only two. These professionals took their training seriously and performed well on demand. Is it unreasonable to suggest that an armed citizen can successfully train and practice for post-incident survival to overcome panicky impulses to babble?

Practicing Critical Skills

It is surprising how few gun owners practice post-shooting survival, though much time is dedicated to marksmanship training. I know only one person who has made practice runs of the post-shooting 9-1-1 call with her training buddies. Instructors commonly employ role-play to work out possible miscues of interacting with assailants or with responding officers. Why not test and rehearse various 9-1-1 calls with role players acting the part of an aggressive police dispatcher?

Is role-play the same as the real thing? Of course not. It is a mere shadow, but just as role-play is used to teach tactics, realistically conducted role-play can also imprint on the mind various strategies for dealing with law enforcement after a shooting, starting with the 9-1-1 call.

When the police arrive on the scene of a shooting, they will ask for an account of what happened. Rarely is the Miranda warning read to the suspect during the first moments of police contact. To introduce Miranda issues before police have decided to arrest you sacrifices opportunities to prove who attacked whom, identifying evidence proving your innocence. Prematurely invoking Miranda rights reduces police options to pretty much one: take this man or woman to jail and hold them until their attorney gets there and an interview with detectives can be arranged.

While unpleasant, being jailed is survivable. What may not be legally survivable is the loss of perishable physical evidence that would prove exculpatory if someone, anyone would point it out to investigators on the scene.

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It would be wonderful if your attorney could arrive at your location in time to do that, but is that realistic? As one attorney writes in *After You Shoot,* even if your attorney arrives on the scene, they, like every other uninvolved individual, are kept outside the crime scene tape.

Once police recite the Miranda warning, no good comes from further statements. A conclusion has been drawn that there is sufficient cause to arrest you. Be quiet, wait for your attorney, and wait for the formal interrogation(s) sure to following in coming days. It is good advice, congruent with that offered by the Network, for at that point there is little value in additional explanations.

Korwin's Adnarim (reverse Miranda) Statement has the self-defense shooter virtually Mirandizing him- or herself upon first contact with responding officers. Many of the attorneys critiquing Korwin's reverse Miranda warning expressed concern about how a jury would judge this and other post-shooting strategies recommended.

One hopes, of course, to avoid a court case entirely. Network educational initiatives are designed to help Network members avoid being the innocent victims who create the kind of case law Korwin seeks to counteract the "cold air" advice he rebukes. The Network teaches members strategies to prevent charges against them by clearly, succinctly communicating the bare facts necessary to show that they were the victim of a deadly force attack and employed defensive deadly force only as a last resort.

Study how the police respond after being in a shooting, Korwin advises, noting the presumption of innocence afforded police is generally denied the armed citizen. His chapter comparing officer-involved shootings to armed citizens' uses of deadly force, points out that law enforcement has trained post shooting teams on stand-by to protect the department's interests, while the armed citizen has rarely even read a book on the subject, let alone procured an attorney to call. In the chapter on assembling the post-shooting team, Korwin's advice is identical to that given Network members – seek out an attorney, schedule an initial consultation and become a paying client.

Network President Quoted

The Network is a large target in Korwin's sights as he refers to our web-published articles on post shooting legal survival. Conclusions drawn by this non-member are interesting, though they are not without minor inaccuracies. For example, Network President Marty Hayes is not a practicing attorney, though he does hold a law degree. Hayes also expressed concern about the accuracy of Korwin's characterization of his opinions about handing a cop a card invoking your Miranda rights.

From the first, Korwin acknowledges that his book is not the definitive answer to protecting innocent defendants. Unfortunately, ad copy promoting the book promises, "common-sense, workable solutions to … vicious traps that threaten every gun owner and innocent crime victim in America. If you have a gun for self defense, find out how you should protect yourself—*After You Shoot*." In reality, Korwin's book is a clarion call for reform of the criminal justice system.

Korwin suggests legislation mandating limited immunity from prosecution using statements recorded on the 9-1-1 call. The best outcome from Korwin's book may come from activists converting his vision of what should be into genuine protections for armed citizens, lobbying for changes in the law about admitting survivor's statements from their 9-1-1 call into prosecution against them.

Korwin is at his best in this book when he advises survivors about interactions with the media. *After You Shoot* includes several fine sections on the topic that should go far to help you realize that no good can come of telling your story to the mainstream media, and explains specific dangers in doing so. A lifetime writer and publicist, Korwin has the chops to level these criticisms against the press, and on this topic we would be foolish to ignore what he knows.

Editor's Notebook


Gila Hayes

Giving Thanks

What a month November was! Membership is growing steadily, and the fund on which we will draw to help defray the legal expenses of a member who is in a self-defense shooting will have grown to over $85,000. It is extremely rewarding to see that bank account approach six figures.

The Network is just under three years old and as of this writing it has 2,550 members. This has been an exciting several years, without a lot of free time on weekends or evenings, as we have poured all of our energies into bringing the Network to this point, knowing that the Network's success would be reflected in its membership statistics. Informative articles in a variety of gun publications and websites have supported our growth, though the Network has bought only a little tightly targeted advertising. Network President Marty Hayes has always said that he will feel that the Network is capable of supporting its member's legal needs when it is 10,000 members strong with $500,000 in the legal defense fund. We are one-quarter of the way there with membership numbers. The monies accumulating in the legal defense fund, while growing commensurately with new and renewal memberships, are also increasing due to Network V.P. Vincent Shuck's fundraising auctions on Gunbroker.com.

Just yesterday, a case of .45 ACP hollow point ammunition contributed by CorBon Ammunition brought an additional $455 into the Foundation coffers. We've really appreciated the early support of companies like CorBon, Galco, Crimson Trace and Safe Direction, who believed in the Network's mission from its early days and lent us their support. If you have the chance to thank these companies – either by writing an email or letter to them and by favoring their products over those of their competitors – it would go far in letting them know that Network members notice and appreciate their assistance.

Other individuals supporting the Network are found under our website heading of "Affiliates." The Network now has three categories of Affiliates – our 90-some affiliated attorneys, our many, many affiliated instructors and a relatively new sub-group, the Network Affiliated Gun Stores. Who are these folks and what do they do for members?

Our Network Affiliated Attorneys list their contact information in the members-only section of the website so our members can get to know them now, just in case they are involved in a self-defense shooting in the future.

Of course, our attorneys also contribute to the popular eJournal column, *Attorney Question of the Month*, which I appreciate, too! Thanks, attorneys! If you've been reading that column, you already know that our Affiliated Attorneys are an independent-minded bunch, bless their hearts, and often their answers to our questions are rather varied. I think there is considerable benefit to serious consideration of different viewpoints about all of the concerns the armed citizen faces – from the acquisition of a gun, to training, to tactical planning, to post-shooting police statements, to how best to explain in court the self-defense choices a member made during a crisis.

Decisions made in these and related areas of concern could mean the difference between being adjudged guilty of a crime or being able to cope with a shooting's after-effects with the help and comfort of family and friends. For sharing their knowledge and opinions with us, as well as being available to advise Network members, we owe our Affiliated Attorneys a debt of gratitude.

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Armed Citizens' Legal Defense Network, LLC

PO Box 400, Onalaska, WA 98570 • 360-978-5200 • info@armedcitizensnetwork.org

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The **Armed Citizens' Legal Defense Network, LLC** receives its direction from these corporate officers:
Marty Hayes, President
J. Vincent Shuck, Vice President
Gila Hayes, Operations Manager

We welcome your questions and comments about the Network. Please write to us at info@armedcitizensnetwork.org.

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The largest class of Network Affiliate is that of Affiliated Instructor. These leaders – women and men who go out into their communities and teach gun safety, marksmanship, use of deadly force, survival tactics and more – also share another bit of vital information with their students when they tell them about the Network and give them the Network's brochure and informational 16-page booklet.

Our Affiliated Instructor-run grass-roots publicity campaign is just one of the reasons the Network has not had to sink a lot of money into conventional advertising in our first three years. But more importantly, the Affiliated Instructors sent a message to the folks who became new Network members. A message that a print ad or a banner purchased on an Internet website could not have conveyed. When a student learns about the Network from an instructor they have trusted to teach them other critical, life-saving skills, that trust is extended to the Network.

As a new, unique idea for armed citizen legal protection, trust has been one of the largest hurdles the Network has had to overcome. Though our website is extensive, attempting to communicate every detail of how the Network functions, we are up against the very understandable concern that we might be shysters bent on separating gullible people from their money, with nothing to offer in return. I'm sorry, but that is the ugly truth. If I were in the shoes of an average gun owner just browsing the Internet, I would certainly entertain that suspicion until shown otherwise.

The Affiliated Instructors, in speaking to their students about the Network, immediately allay that concern, because they are the authority in their classroom. What they teach on other topics is reliable, so when they tell the student that the Network provides an uncommon level of support and protection for members, it rings true.

We owe our Network Affiliated Instructors a huge round of applause for spreading the word and increasing Network membership. In addition, these affiliates contribute great training, skills and learning tips to their own column in the ***eJournal***, *Instructors Question of the Month.*

The Network also uses Affiliated Instructors as our eyes and ears in the outlying communities where we are not able to gather our own intel. Just last week, I polled many affiliates asking their recommendations for gun-savvy attorneys in their home states. We'll contact the attorneys they recommend and some of those lawyers will accept and be listed on the members-only attorneys list where one day one may make a tremendous difference in the life of one of our Network members. Thank you, Affiliated Instructors, for all you do for the Network.

Finally, we have a new category of Affiliates – the Affiliated Gun Shops. While the title sounds rather impersonal, these affiliates are women and men operating gun shops, gun smithies and shooting ranges all across the nation. Over the past year, we've sent out mailings to selected Federal Firearms Licensees, giving them copies of the Network's booklet *What Every Gun Owner Needs to Know About Self-Defense Law* and asking if they would distribute that booklet to customers in their gun shop.

The response so far has been excellent, and as we contact this rather large mailing list then do follow up mailings to those who were too busy to answer the first offer, we expect to double and triple the current numbers of Network Affiliated Gun Shops. This is no get-done-quick scheme! It has taken considerable time so far and there is much work to be done before it is complete. These efforts pay off, though. As we register new Network members, we ask if there is a person or resource referring them to the Network. In just this past month alone, a number have said they picked up the booklet or our brochure at the range or gun store they patronize, took it home, read it cover to cover, and decided to become a Network member.

Members, as the holiday season arrives and you set out to buy your child's first rifle, or a firearm accessory for your spouse or best friend, please check the Affiliated Gun Shop listing first to see if you can give your business to one of our own. I hope the men and women running the Affiliated Gun Shops will take a minute to pat themselves on the back for helping the Network grow. We appreciate how they have helped us reach gun owners who are critically interested in our message and our mission.

Which brings us to the one, single factor that makes the Network the strong, vital and growing entity it has become. YOU – our member! Without members, this wouldn't be much of a Network, would it? Every day, we keep firmly in mind, that our mission is making sure that you have the resources that you need – reliable educational materials, thought provoking monthly journals, attorneys, instructors and gun stores you know you can go to and be among people who view the American citizens right to armed self defense the same way you do.

I'm pleased with how the Network is growing. I hope you share that pride!

Armed Citizens' Legal Defense Network, LLC

How to join

Print this application form and FAX it to 1-360-978-6102 (if you are using a VISA/MC), or mail it to P.O. Box 400, Onalaska, WA, 98570 with your check for $85 for a 1-year membership (add $50 each for additional memberships for others in your household–must reside at same address) or a 3-year membership for $225. If you have any questions, please call 360-978-5200.

When your application is accepted, you will receive three DVDs concerning the lawful use of deadly force for self-defense. Additionally, you will become immediately eligible to have any future case of self-defense reviewed by one of our Network experts at no charge, and may apply for a grant of financial assistance for any litigated self-defense cases initiated after membership application (please read http://www.armedcitizensnetwork.org/html). You will also receive a membership card with your user name and password for the member's Internet forum and other areas of the Network web site restricted to members only, as well as your coupon code for the 20% discount at the Network's on-line book and DVD store.

We look forward to your participation in the Network as part of a family of armed citizens who passionately care about the right to armed self-defense, and want to protect themselves from the legal nightmare that sometimes accompanies a lawful act of self-defense.

APPLICATION FOR INDIVIDUAL MEMBERSHIP

Full Name _____

Mailing Address _____

City _____

State _____ Zip _____

Phone _____-_____-_____

Email _____

How did you hear about the Network? _____

_____

APPLICANT'S STATEMENT:

With my signature, I hereby attest that under the laws of the United States of America, I am not legally prohibited from possessing firearms, that I am 18 years of age or older, and that I legally reside in the United States. I understand that any grant of benefits is limited to lawful acts of self defense with no additional criminal charges (unlawful possession of concealed handgun, for example) associated with the incident.

_____
Applicant's Signature

_____
Please Print Name

_____
(1) Additional Household Member Applicant's Signature

_____
Please Print Name

_____
(2) Additional Household Member Applicant's Signature

_____
Please Print Name

- - - - MEMBERSHIP FEES - - - -

❑ $225.00 3-Year Individual Membership

❑ $85.00 Individual Membership

❑ $50 Each Additional Household Resident per year

Name(s) _____

_____

❑ Charge my card ❑ Check enclosed

CREDIT CARD CHARGE AUTHORIZATION

I, _____ hereby
(Clearly print name as it appears on credit card)

authorize Armed Citizens' Legal Defense Network, LLC to charge $_____._____
on my VISA or MasterCard (circle one)

_____/_____/_____/_____
Account Number

Expiration Date _____/_____

CVV Code _____ 3 digits on back of card

Full billing address for credit card account:

_____
(Street Address or Box Number)

_____
(City)

_____
(State and Zip Code)

_____
(Signature authorizing charge)

Please mail to the Armed Citizens' Legal Defense Network, LLC, P O Box 400, Onalaska, WA 98570 or fax to 360-978-6102.

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